Volume 3

NEBRASKA DEPARTMENT OF

# HSURANCE

Mike Johanns
Governor

L. Tim Wagner
Director

#### Inside:

_	_	_
DODEDTY	& CASUALTY	7
PROPERIT	& CASUALIT	

Rate & Form Act

#### LIFE & HEALTH

2

Web Site Link Available

#### CONSUMER AFFAIRS 3

- Why Some SR 22's Don't Fly
- Responding to Complaints
- Absence of an Insured's Credit Information

#### LEGAL DIVISION 5

- Supreme Court Cases
- Company/Producer Actions

#### Fraud Division 10

Kohtz on Board of CrimeStoppers

#### **EXAMINATION DIVISION 11**

- Pre-Need Exams Completed
- Financial Exams Completed

Department Calendar Back

## Responsibilities of A Designated Agent

Before the Department will issue an insurance agency license, the agency must designate a licensed producer who will be responsible for the agency's compliance with the insurance laws, rules, and regulations of this state. See <u>Neb.Rev.Stat.</u> §44-4053 (2). The "designated agent," as the Department refers to the person, is the individual the Department will hold responsible for the insurance activities of the agency.

Recently, the Department took administrative action against the license of a title insurance agent who was appointed designated agent for a title insurance agency. The agency did not comply with the certified public accountant audit requirement of Neb. Rev. Stat. §44-19,116 and the Department filed a petition against the designated agent. At hearing, facts were established which called into question the designated agent's authority to contract for the certified public accountant audit because the agent was an employee. One might think that the appropriate licensee to pursue is the agency's owner, however, the owner was not licensed in any capacity. Regardless of the circumstances, the designated agent is responsible for an agency's compliance with Nebraska insurance laws, rules, and regulations. Thus, the designated agent was responsible for the agency's failure to complete a certified public accountant audit and now has an administrative action that must be reported as a disciplinary action to other licensing entities and insurers.

This situation does not apply only to title insurance agents or agencies. Any entity acting as an insurance producer is required to maintain a license and appoint a designated agent. However, it is important for the individual acting as the designated agent to understand that he/she is ultimately responsible for all insurance activities of the agency and, as such, his or her producer's license is at risk. A producer should not agree to be appointed as a designated agent without having an ownership interest in the agency or active role in the management of the agency.



## PROPERTY & CASUALTY DIVISION

## **Property/Casualty Rate and Form Act**

The revised Property/Casualty Rate and Form Act went into effect on January 1, 2001. There were various revisions to the Act, however, most have not caused the confusion that <a href="Neb.Rev.Stat.8844-7509">Neb.Rev.Stat.8844-7509</a> and 44-7512 have caused.

Section 44-7512 does away with all subjective scheduled rating. The corresponding Department regulation is Title 210, Chapter 74. Section 44-7509 allows a plus/minus 40% rating flexibility that does not need to be filed with us because if filed, it gives the impression that the company is asking for subjective rating—which isn't allowed—over and above that which is already allowed by the statute. Some carriers have internal guidelines regarding how that 40% is being used and those do not need to be filed with us. The 40% provides an upward/downward rating adjustment that should provide enough flexibility to address most situations that arise. As in the past, we continue to allow objective criteria, however, it must be specific and must be applied to all that qualify.

Unfortunately, we are still receiving filings that include a subjective rating program, which results in correspondence on the filing to determine if there is a Nebraska specific page withdrawing that rule. As a result, there has been some discussion of an automatic disapproval of the filing if subjective rating programs are included. Please make every attempt to make filings based on the current statutes.

# LIFE AND HEALTH DIVISION

#### Life & Health Division Link Available on Web Site

The Department's web site, found at <a href="www.nol.org/home/ndoi">www.nol.org/home/ndoi</a>, now has a link for the Life & Health Division. From this link, companies may access Company Bulletin 53 that has the filing instructions for the Division and an interactive Life & Health Division Filing Form. The web site also has information regarding the interest rate to be paid on death proceeds. The link is still under development so look for updates in future newsletters.

Section 44-7512 does away with all subjective scheduled rating.

We are still receiving filings that include a subjective rating program, which results in correspondence on the filing to determine if there is a Nebraska specific page with drawing that rule.

Filings need to be made based on current statutes to eliminate discussions of automatic disapproval of filings if subjective rating programs are included.

The division link allows companies to access CB-53, that has the filing instructions, and also has an interactive filing form.



## CONSUMER AFFAIRS DIVISION

#### Why Some SR 22's "Don't Fly"

The Nebraska Department of Motor Vehicles has contacted the Department of Insurance to discuss numerous instances of problematic SR 22 financial responsibility filings. We agreed to provide information to insurers and agents to help reduce the number of filings that must be rejected. Below are some common reasons why SR 22 filings are returned.

An authorized representative of the insurer must sign SR 22 forms. Each insurer that issues SR 22's must provide the Department of Motor Vehicles with a list of updated signatures. The Department of Motor Vehicles uses the list of signatures to verify that the signatures are not forged. Filings are not accepted for policies written by companies that have not provided the Department of Motor Vehicles with this information. When an authorized signature has been changed, it is important to destroy the inventory of SR 22's with outdated signatures. Some companies require all SR 22's to be issued by the home office.

Following is a listing of additional information that the Department of Motor Vehicles also requires:

- Valid, full and in-force policy numbers no binders (Alpha is the only company that issues binder numbers) or statements advising of pending policy issuance.
- The form must be completed correctly and in its entirety, including all date fields.
- Certain uniform financial responsibility form types must be submitted in a full-page format with an agency stamp on front of the page.
- No alterations are permitted on the form.
- Policy effective dates that are current and not dated in the future.
   It may be useful to include both the effective date and expiration date.
- The name of the insurance company. Insurance agency names are not sufficient.
- Driver's name, complete mailing address, and two out of these three identifying items (driver's license number, birth date, social security number).
- A clear indication that the policy information submitted to the insurer indicates an SR 22 is being filed. The insurer's computer records should indicate that an SR 22 was issued.

We are working with the Department of Motor Vehicles to provide information to insurers and agents in an attempt to reduce the number of returned SR 22 filings.

Filings are not accepted for policies written by companies that have not provided the Department of Motor Vehicles with required information.

Insurance agency names are not sufficient—the name of the insurance company must be given.



- Use of electronic filings by the insurer may also assist in reducing SR 22 errors.
- Original or electronic filings if the insurer files electronically. Fax/ photo copies are not accepted.
   Out-of-state filings must be accompanied by a cover letter from
- Out-of-state filings must be accompanied by a cover letter from the home office of the insurance company. The letter should authorize the DMV to accept the out-of-state filing and provide a contact name and phone number. The letter must also provide assurance that the company would automatically forward a SR 26 notice of cancellation in the event the policy should go out of force.
- Certain uniform financial responsibility form types must be submitted in a full-page format printed on agency letterhead.

Use of electronic filings by the insurer may also assist in reducing SR 22 errors.

## **Responding to Consumer Complaints**

Our Division would like to acknowledge all of the insurance companies who consistently strive to provide prompt and complete responses to consumer complaints. Your efforts to reply in a timely manner to the concerns of your policyholders are sincerely appreciated. We recognize that it may not always be possible to provide an immediate response. If you are not able to reply within the time period requested, please let us know. A telephone call or a brief letter explaining the reason for the delay and advising as to the anticipated response date will suffice. We want to discourage you from sending your complaint responses via facsimile, as this method of transmission is not practical given the volume of mail received by our division.

#### Absence of An Insured's Credit Information

Consumer Affairs has recently received reports of adverse action taken by insurers based on an insured's lack of a credit history. Companies are reminded, under the Model Act Regarding Use of Credit Information in Personal Insurance (Sections 44-7701 to 44-7712), an insurance company cannot consider an absence of credit information or an inability to calculate an insurance score, in underwriting or rating personal insurance.

If your company relies on a consumer reporting agency for insurance scores and credit information, you are responsible for using the information in a manner consistent with the Act.

We want to discourage you from sending your complaint responses via facsimile, as this method of transmission is not practical given the volume of mail received by our division.

Companies are reminded that an insurance company cannot consider an absence of credit information or an inability to calculate an insurance score in underwriting or rating personal insurance.



# LEGAL DIVISION

#### **Supreme Court Cases**

#### Aetna Health Inc. v. Davila, et al., 124 S.Ct. 2488

In this case, the Supreme Court of the United States determined whether ERISA completely pre-empts state statutes when an HMO refuses to cover medical services under a state statute. The defendant, Davila, was denied medical coverage by his HMO. He had sought treatment via Vioxx for his arthritis pain. Instead, he began use of an alternative drug, Naprosyn, which caused an allergic reaction and injury. Based on this denial of coverage and resulting injury, Davila sued his insurance carrier under a Texas Law that required health care providers to take ordinary care when making medical care decisions, and thus the lack of this care caused the defendant's injuries.

The issue at stake here is whether the Texas law (and many other states have similar laws) should be preempted by federal law, specifically the Employee Retirement Income Security Act of 1974 (ERISA). In a unanimous opinion, the Supreme Court found that ERISA did pre-empt the Texas law.

The Supreme Court ruled that ERISA does pre-empt the THCLA. In fact, the court said that the essential purpose of ERISA was to establish a "uniform regulatory regime over employee benefit plans [and] that employee benefit plan regulation would be 'exclusively a federal concern.'" *Aetna Health Inc. v. Davila*, 124 S.Ct. 2488, 2495 (2004), quoting *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 523, 101 S.Ct. 1895, 68 L.Ed.2d 402 (1981). And for this reason, it is clear that because the THCLA attempts to duplicate much of the regulation within ERISA, ERISA does pre-empt because of Congress' desire for ERISA to be the exclusive remedy for these types of claims.

# Jensen v. Board of Regents of the University of Nebraska and North American Specialty Insurance Company (NASIC), 268 Neb. 512

The issues in this case are whether an insured is entitled to relief from an insurance provider when the insured holds insurance coverage to pay for excess costs associated with specific types of damages and when the insured settles with a separate party owing damages under the claim.

Tracy Jensen was injured while practicing as a member of the University of Nebraska's spirit squad. She suffered severe spinal injuries. At the time, she was insured by three separate insurance policies, one of which was held by NASIC. Following her injury, she settled her lawsuit with the University for around \$2 million dollars. NASIC contends that this settlement acted as other insurance and thus, the claim against NASIC should be subrogated. The trial court disagreed granting summary judgment for full insurance coverage to Jensen.

The Supreme Court of Nebraska affirmed the trial court's summary judgment ruling, holding that the insured was entitled to coverage by the insurance company despite the settlement. Thus, the insurer was not entitled to subrogate the claims.

First, the Supreme Court ruled that subrogation should not be allowed in this case because Jensen has not been fully compensated for her injuries. Subrogation involves a substitution of one person in the place of another with reference to a lawful claim, demand, or right. It is often used to protect an insurance company from double payment to an insured who has already been fully compensated by the person who



caused the damages in their individual capacity. Thus, the question in this case turns on whether Jensen has been fully compensated. The court showed that her claim for \$8.6 million was justifiable and thus well above her settlement for \$2 million. Thus, Jensen had not been fully compensated for her injuries, and NASIC owed further compensation under the insurance policy.

Second, the court rejected the claim that the settlement was described as "Other Insurance" within the insurance policy. The Supreme Court opined that the language around "Other Insurance" was ambiguous and thus it should be liberally construed for Jensen.

#### Unisys Corporation v. Nebraska Life and Health Insurance Guaranty Association, 267 Neb. 158

At the heart of this case is the question of whether employees were entitled to a repayment by the Nebraska Life and Health Insurance Guaranty Association ("NLHIGA") on life insurance coverage administered and "owned" by their corporate retirement plan administrator after the insolvency of the corporation's insurance and annuity provider.

Unisys Corporation is a Delaware corporation that does business around the country, and as such, it has employees scattered throughout the country, including 278 Nebraska employees. As part of their benefit package, these employees had access to retirement investment plans that included the option to buy conservative investments that included life insurance coverage. This coverage had a provision that allowed the trustee, the plan administrator, to request that Executive Life sever an individual life portion into a separate annuity contract to be handed over directly to the employee. This insurance coverage was provided by Executive Life. Executive Life was placed into conservation on April 11, 1991 by the State of California, and on December 6, 1991 declared insolvent. Under a rehabilitation plan, the employees have received some compensation for their loss. But, Unisys applied to the NLHIGA to provide the unpaid portion of the insureds' losses. The NLHIGA refused to pay this claim.

The Supreme Court of Nebraska ruled that NLHIGA was responsible for the payments to the Unisys employees for the amount that was not paid by the settlement with Executive, meaning that the court believed that the policies were annuity contracts and that the employees were equitable owners. The court based its opinion, at least in part, on their understanding of the guaranty association's role as a protector of Nebraska residents from insolvencies.

## **Actions Taken Against Companies**

CAUSE NO.	ALLEGATION	DISPOSITION
C-1438 <b>Connecticut General Life Insurance Company</b> Hartford, CT	Violated <u>Neb. Rev. Stat</u> . §§44- 1521— 44-1544. Multiple violations of the Unfair Trade Practices Act.	Consent Order \$17,500 admin. fine 7/9/04
C-1447 <b>New York Life Insurance Company</b> Baltimore, MD	Multi-state regulatory settlement agreement based on racially differentiated premiums from 1920-1948.	Multi-state agreement 7/20/04

ALLEGATION



# Actions Taken Against Companies (cont.)

CAUSE NO.	ALLEGATION	DISPOSITION
C-1452 American National Insurance Company Galveston, TX	Multi-state regulatory settlement agreement based on racially differentiated premiums from 1936-1939 and 1948-1964 which were discovered by a market conduct exam conducted by the Texas DOI.	Multi-state agreement \$1,000 admin. fine 8/03/04
C-1455  Pan-American Life Insurance Company New Orleans, LA	Violated Neb. Rev. Stat. §44-1525 (11) & Title 210, NAC Chapter 61, Sec. 006.02. Failed to respond to Department within 15 business days.	Consent Order \$1,000 admin. fine 10/01/04
C-1457 Acceptance Casualty Insurance Company Raleigh, NC	Violated Neb. Rev. Stat. §§44-2133(2) & 44-2143(2) & Title 210, NAC Chapter 24, Sec. 018. Failed to notify Department with prior notice of transfer of assets.	Consent Order \$2,500 admin. fine 10/18/04
C-1458 Acceptance Indemnity Insurance Company Raleigh, NC	Violated Neb. Rev. Stat. §§44-2133(2) & 44-2143(2) & Title 210, NAC Chapter 24, Sec. 018. Failed to notify Department with prior notice of transfer of assets.	Consent Order \$2,500 admin. fine 10/18/04

# **Actions Taken Against Producers**

CAUSE NO.	ALLEGATION	DISPOSITION
A-1536 Jerome J. O'Connor, Jr. Omaha, NE	Violated Neb. Rev. Stat. §§44-4059(1)(b) & 44-1525(11). Violated any insurance law; failed to respond to Department within 15 business days.	Order Producer license suspended for 6 months to run concurrently with A-1566 9/1/04
A-1559 <b>Stacie M. Wade</b> Omaha, NE	Violated Neb. Rev. Stat. §44-4059(1)(b) & (h). Violated any insurance law; demonstrated incompetence, untrustworthiness or financial irresponsibility.	Order Producer license revoked 7/26/04
A-1566 <b>Jerome J. O'Connor, Jr.</b> Omaha, NE	Violated Neb. Rev. Stat. §44-4059(1)(b) & (h) & 44-4065. Violated any insurance law; untrustworthiness; failed to report administrative action in another state.	Order Producer license suspended for 12 months 9/1/04



# Actions Taken Against Producers (cont.)

CAUSE NO.	ALLEGATION	DISPOSITION
A-1568 <b>Carl M. Bibb</b> Omaha, NE	Violated Neb. Rev. Stat. §44-4059 (1)(b) & Title 210, NAC Chapter 60, Sec. 006.03. Violated any insurance law; unfair trade practices.	Consent Order \$200 admin. fine; producer li- cense suspended 5 days 8/18/04
A-1572 <b>Judy L. Simpson</b> Omaha, NE	Violated Neb. Rev. Stat. §44-19,116(2) and Title 210, NAC Chapter 34, Sec. 007. Failed to have CPA audit conducted for the previous calendar year; failed to submit audit to the Department by March 31, 2004.	Consent Order \$500 admin. fine; CPA audit conducted within 30 days 8/16/04
A-1573 <b>Kerry L. Holmstrom</b> Omaha, NE	Violated Neb. Rev. Stat. §44-19,116(2) and Title 210, NAC Chapter 34, Sec. 007. Failed to have CPA audit conducted for the previous calendar year; failed to submit audit to the Department by March 31, 2004.	Consent Order \$500 admin. fine; CPA audit conducted within 30 days 8/16/04
A-1576 <b>Michael J. Weightman</b> Grand Rapids, MI	Violated Neb. Rev. Stat. §44-19,116(2) and Title 210, NAC Chapter 34, Sec. 007. Failed to have CPA audit conducted for the previous calendar year; failed to submit audit to the Department by March 31, 2004.	Consent Order \$500 admin. fine; CPA audit conducted within 30 days 7/15/04
A-1577 <b>Steve F. Jansen</b> Fordyce, NE	Violated Neb. Rev. Stat. §§44-4059(1)(b) & 44-1525(11). Violated any insurance law; failed to respond to Department within 15 business days.	Order \$1,000 admin. fine 7/30/04
A-1578 Michael Segal & Near North Insurance Broker- age, Inc. Chicago, IL	Violated Neb. Rev. Stat. §§44-4059(1)(b), (f), (g), (h), (i) & 44-6604(4) & (5). Violated any insurance law; convicted of a felony or Class I, II, or III misdemeanor; unfair trade practices; using fraudulent practices; producer license suspended or revoked in another state (Segal only); false or fraudulent representation; and willfully transacted any contract or agreement in violation of the Insurance Fraud Act.	Order Licenses (producer & agency) suspended indefinitely pending appeal of convictions. Licenses will be revoked without further action if convictions are upheld. 8/13/04
A-1579 <b>Diana K. Biggs</b> Omaha, NE	Violated Neb. Rev. Stat. §§44-4059(1)(b), (d), (h), (j) & 44-319. Violated any insurance law; improperly withheld or converted monies; used fraudulent, coercive or dishonest practices; forged another's name to any insurance document; failed to hold funds at a fiduciary capacity.	Consent Order Producer license revoked 7/29/04



# Actions Taken Against Producers (cont.)

CAUSE NO.	ALLEGATION	DISPOSITION
A-1580 <b>Buddy L. Hudson</b> Fremont, NE	Violated Neb. Rev. Stat. §§44-4059(1)(b) & (f) & 44-4065(2). Violated any insurance law; convicted of a felony or Class I, II, or III misdemeanor; failed to report any type of criminal prosecution to Department within 30 days.	Order Producer license revoked 9/17/04
A-1581 <b>Verna I. Hudson</b> Orange Park, FL	Violated Neb. Rev. Stat. §§44-4059(1)(b) & (f) & 44-4065(2). Violated any insurance law; convicted of a felony or Class I, II, or III misdemeanor; failed to report any type of criminal prosecution to Department within 30 days.	Order Producer license revoked 9/17/04
A-1582 <b>V. J. Rozanek</b> David City, NE	Violated Neb. Rev. Stat. §§44-4059(1)(b) & (g) & 44-1525(11). Violated any insurance law; unfair trade practices; failed to respond to Department within 15 business days.	Order \$1,000 admin. fine 9/23/04
A-1584 <b>Cheri A. Uettwiller</b> Omaha, NE	Violated Neb. Rev. Stat. §44-19,116(2) and Title 210, NAC Chapter 34, Sec. 007. Failed to have CPA audit conducted for the previous calendar year; failed to submit audit to the Department by March 31, 2004.	Order \$750 admin. fine; CPA audit conducted and report submitted by 12/31/04 7/15/04
A-1586 <b>Edward Eugene Schoof</b> Ruskin, NE	Violated Neb. Rev. Stat. §§44-4059(1)(b) & 44-1525(11). Violated any insurance law; unfair trade practices; failed to respond to Department within 15 business days.	Consent Order \$500 admin. fine 9/17/04
A-1587 <b>Stacie M. Wade</b> Omaha, NE	Application for producer license denied; hearing requested by applicant.	Denial upheld 9/23/04
A-1588 <b>Sherry R. Wartman</b> North Platte, NE	Violated Neb. Rev. Stat. §§44-4059(1)(b) & 44-1525(11). Violated any insurance law; failed to respond to Department within 15 business days.	Order \$500 admin. fine; producer li- cense suspended until response received by Department 10/01/04
A-1589 John P. Fahey & Missouri River Title Co., Inc. Omaha, NE	Violated Neb. Rev. Stat. §§44-4059(1)(b) & 44-1525(11). Violated any insurance law; failed to respond to Department within 15 business days.	Consent Order \$500 admin. fine 9/24/04



## **Actions Taken Against Producers (cont.)**

CAUSE NO.	ALLEGATION	DISPOSITION
A-1590 <b>Matthew D. Sleister</b> Omaha, NE	Violated Neb. Rev. Stat. §§44-4059 (1)(b) & 44-1524. Violated any insurance law; unfair trade practices.	Consent Order \$750 admin. fine 9/23/04
A-1591 <b>Matthew D. Sleister</b> Omaha, NE	Violated Neb. Rev. Stat. §44-4059(1)(b) & Title 210, NAC Chapter 50, Sec. 005, 006, & 010. Violated any insurance law; multiple violations of Chapter 50.	Consent Order \$5,500 admin. fine; producer license suspended 15 days 10/19/04
A-1592 <b>Christopher J. Porto</b> Pittsburgh, PA	Violated Neb. Rev. Stat. §44-19,116(2) and Title 210, NAC Chapter 34, Sec. 007. Failed to have CPA audit conducted for the previous calendar year; failed to submit audit to the Department by March 31, 2004.	Consent Order \$500 admin. fine; CPA audit conducted within 30 days 9/24/04

## FRAUD DIVISION

## Former Fraud Division Chief Serves on Board of CrimeStoppers

The Fraud Prevention Division is proud to announce that Don Kohtz, Central States Health and Life Company of Omaha (CSO) Assistant Counsel, and former Fraud Prevention Division Chief, is now a part of the Board of Directors of the Nebraska CrimeStoppers, Inc., a running program since 1989. Kohtz is representing the insurance industry and continues to offer his knowledge and expertise to increase community involvement to help solve crime. The board consists of citizens, law enforcement and members of the media. It has two main goals:

- 1. To establish a network for reporting crime tips in an anonymous way along with being eligible for a cash reward.
- 2. To assist in the establishment of local CrimeStoppers programs across the state.

CrimeStoppers is easy and convenient for anyone to use. A citizen can call into the State CrimeStoppers toll free number, 1-800-422-1494, which will contact a Nebraska State Patrol dispatcher. A number is assigned to the caller so the caller can remain anonymous. The information is documented on a form and the form is forwarded to a designated CrimeStopper officer with the Nebraska State Patrol. The information is immediately sent to the proper law enforcement jurisdiction for



investigation. Use of this program is encouraged by the Nebraska State Patrol to maintain public safety. CrimeStoppers continues to be highly successful in assisting in solving many crimes. Not only will you be assisting your fellow citizens in helping to stop crime by calling 1-800-422-1494, you can be eligible to collect cash rewards up to \$1,000.00 all while continuing your anonymity.

Insurance crimes not only result in higher premiums for every individual, they also lower the trust that consumers hold in the financial service industries. That is why the Fraud Prevention Division is proud to be part of the CrimeStoppers program, assisting in the prevention of insurance crimes. The Fraud Prevention Division would like to thank Don Kohtz for his continued support in the fight against insurance fraud. With your assistance, you to can also help prevent this ongoing problem.

# Examination Division

#### **Premium Tax Packets**

The Department will no longer mail the packet containing premium tax and other miscellaneous forms unless specifically requested. Effective December 1, the forms and the filing checklist can be downloaded from the Department's website at <a href="https://www.nol.org/home/ndoi">www.nol.org/home/ndoi</a>.

## **Pre-Need Exams Completed During Third Quarter, 2004**

Fairbury Care Group, Inc. Rozanek & Son Colonial Chapel WB, LLC

## Financial Examinations Completed During Third Quarter, 2004

Berkshire Hathaway Life Insurance Company of Nebraska **BHG Life Insurance Company** Columbia Insurance Company Continental General Insurance Company (Limited Scope) **Douglas County Mutual Insurance Company** Global Surety & Insurance Company Grange Mutual Insurance Company of Custer County **Knox County Farmers Mutual Insurance Company** League Association of Risk Management Medico Life Insurance Company (Limited Scope) Mutual Protective Insurance Company (Limited Scope) National Fire and Marine Insurance Company **National Indemnity Company** Scandinavian Mutual Insurance Company of Polk County United Healthcare of the Midlands. Inc. Wesco-Financial Insurance Company World Insurance Company

Financial examination reports become public documents once they have been placed on official file by the Department. Copies may be obtained from the Department at the cost of \$.50 per page.





November 11: Department Closed - Veteran's Day

November 25-26: Department Closed - Thanksgiving

December 24: Department Closed - Christmas Day observed

December 31: Department Closed - New Year's Day observed

January 17: Department Closed - Martin Luther King Day

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